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## **LABOUR & EMPLOYMENT DEPARTMENT**

### **NOTIFICATION**

The 13th September 2010

No. 7701—li/1(B)-83/2004-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 16th June 2010 in Industrial Dispute Case No. 7 of 2005 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Orissa State Cashew Development Corporation Ltd., Bhubaneswar and its workman Shri Pramod Kumar Sahoo was referred to for adjudication is hereby published as in the Schedule below :—

### **SCHEDULE**

**IN THE LABOUR COURT, BHUBANESWAR**

**INDUSTRIAL DISPUTE CASE No. 7 OF 2005**

The 16th June 2010

*Present :*

Shri S. K. Dash,  
Presiding Officer,  
Labour Court, Bhubaneswar.

*Between :*

The Management of M/s Orissa State Cashew Development Corporation Ltd.,  
Bhubaneswar. . . . . First Party—Management

And

Their Workman . . . . . Second Party—Workman  
Shri Pramod Kumar Sahoo.

*Appearances :*

For First Party—Management . . . . . Shri S. K. Sahoo

Second Party—Workman himself . . . . . Shri P. K. Sahoo

## AWARD

The Government of Orissa in exercise of powers conferred by sub-section (5) of Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the matter in dispute to this Court vide their Order No. 1738—li/I (B)-83/2004-LE., dated the 19th February 2005 of the Labour & Employment Department for adjudication of the dispute.

2. The terms of reference is as follows :

“Whether the termination of services of Shri Pramod Kumar Sahoo, Driver by the management of M/s Orissa State Cashew Development Corporation Ltd., Bhubaneswar with effect from the 1st February 2002 is legal and/or justified ? If not, what relief Shri Sahoo is entitled to ?”

3. The case of the workman in brief is that he was initially engaged as N.M.R. Driver under the management with effect from the 20th December 1997. After two years of satisfactory service rendered by him, the workman was engaged as a Driver on a consolidated pay with effect from the 1st February 1999. He continued in his service under the management till the 1st February 2002 without any break in service and had completed more than 240 days in service in each year. The workman was covered under the Provident Fund Scheme and an account number was allotted to him. On the 1st February 2002 all of a sudden the management has refused employment to the workman with a plea that the concerned vehicle which has been appointed by the workman was under repair. The workman was assured by the management that after repair of the vehicle the workman will join in his duty and requested him to wait till then. The vehicle was released from the garage with fitness within 15 days but the workman was not allowed to do any duty to drive the vehicle. The management has engaged fresh Driver to drive the said vehicle. The management has not served any notice to the workman before terminating his service and the provisions of Section 25-F of the Industrial Disputes Act, 1947 has not been followed at all. So in this background the workman has prayed for his reinstatement in service with full back wages.

4. The management appeared and filed written statement challenging the plea of the workman. According to the management the workman was initially engaged as skilled daily wage labourer at the rate of Rs. 42 per day with effect from the 14th December 1998 to drive the office vehicle. Thereafter he was appointed on consolidated pay of Rs. 2,500 per month with effect from the 1st February 1999 to drive the office vehicle of the management with a stipulation that the engagement is purely temporary and subject to termination at any time without any notice. The workman was asked for explanation several times for his negligence in duty and wilful absence during the working period under the management. The office vehicle in which the workman driving was out of order and off-road with effect from the 22nd January 2002. Since the said office vehicle was out of order and off-road the service of the workman as a Driver was not repaired and accordingly the workman being the temporary driver was disengaged with effect from the 1st February 2002. The management had never given any assurance to the workman that after repair of the

vehicle he will join in duty and requested to wait till then. After release of the vehicle from the garage, the same was being driven by the regular Driver of the management and no fresh Driver was engaged in this regard. The workman has no clean service record as he had been asked for explanation several times for his negligence in duty and wilful absence. As the engagement of the workman was purely temporary complying of Provisions of Section 25-F of the Industrial disputes Act was not required. So in this background the management has prayed for answering the reference in his favour.

5. In view of the above pleadings of the parties, the following issues have been framed—

#### ISSUES

- (i) "Whether the termination of services of Shri Pramod Kumar Sahoo, Driver by the management of M/s Orissa State Cashew Development Corporation Ltd., Bhubaneswar with effect from the 1st February 2002 is legal and or justified ?
- (ii) If not, what relief Shri Sahoo is entitled to ?"

6. In order of substantiate their plea the workman has examined himself as W.W. 1 and proved the documents marked as Exts. 1 to 8. Similarly the management has examined the Personal Assistant of the management as M.W. 1 and proved the documents marked as Exts. A to P.

#### FINDINGS

7. *Issue Nos. (i) and (ii)*— Both the issues are taken up together for discussion for convenience.

According to W.W. 1 he joined as N.M.R. Driver on the 20th October 1996 and worked till the 1st February 1999. Thereafter he was appointed as Driver on a consolidated pay at the rate of Rs. 2,500 per month as per Ext. 1. He was terminated from service with effect from the 1st February 2002 as per Ext. 2 which was intimated to him on the 27th February 2002. He was performing his duty as usual from the 1st February 2002 to the 27th February 2002. Ext. 7 was served on him in the garage where the vehicle was repaired. After repairing of the vehicle the management did not reappoint him in service. The management has not paid notice pay or retrenchment compensation to him. He was driving a Tata Sumo vehicle bearing No. OR-02 F-6445. In the cross-examination W.W. 1 admitted that the vehicle was taken to the garage on the 1st February 2002 and he was remaining present in the garage to watch the repair work. M.W. 1 deposes admitting the appointment of the workman on temporary basis and subsequently on consolidated pay at the rate of Rs. 2,500 per month. The appointment was purely temporary subject to termination without any notice and when his service was not required, he was disengaged from service.

8. Perused the documents marked as exhibits by both the parties. Ext. N and Ext. P are two explanations called for from the workman but the management is silent as to what action was taken against him on such explanations called for and what was the reply of the workman in this

regard. Ext. A discloses about his temporary engagement. Exts. C and D are documents showing appointment of the workman on consolidated basis at the rate of Rs. 2,500 per month. Other documents show about the actions of the office regarding repair of the office vehicle. It is admitted by the management that the provisions of Section 25-F of the Industrial Disputes Act has not been complied with as the appointment of the workman was purely temporary basis and subject to termination at any time without any notice. But by the same time it shows that the workman has worked under the management for more than 240 days in last preceding 12 months as this fact has not been disputed. As the workman had worked for more than 240 days in the year preceding the date of termination and when the management had violated the provisions of Section 25-F of the Industrial Disputes Act by not giving any notice or notice pay in lieu of notice and retrenchment compensation before his termination, such termination is illegal in the eye of law. So on careful consideration of the entire evidence available in the case record, I came to the finding that the termination of service of the workman by the management with effect from the 1st February 2002 is illegal and not justified and he is entitled to be reinstated in service.

9. Regarding payment of back wages admittedly the workman has not worked for the management after the 1st February 2002. When the workman had not worked for the management during the period in question and he had not proved by cogent evidence that he was not gainfully employed elsewhere, payment of back wages is not justified. Further according to the settled principle of law the relief of reinstatement with full back wages would not be granted automatically only because it would be lawful to do so. For the said purpose several factors are required to be taken into consideration. On careful consideration of all the materials available, I am of the opinion that instead of full back wages compensation amount of Rs. 5,000 (Rupees five thousand) only in lieu of back wages would meet the ends of justice in this case. Both the issues are answered accordingly.

10. Hence Ordered :

The termination of services of Shri Pramod Kumar Sahoo, Driver by the management of M/s Orissa State Cashew Development Corporation Ltd., Bhubaneswar with effect from the 1st February 2002 is neither legal nor justified. The Workman Shri Sahoo is entitled to be reinstated in service with a lump sum of Rs. 5,000 as compensation in lieu of back wages. The management is directed to implement this Award forthwith.

The reference is answered accordingly.

Dictated and corrected by me.

S. K. DASH  
16-6-2010  
Presiding Officer  
Labour Court, Bhubaneswar

S. K. DASH  
16-6-2010  
Presiding Officer  
Labour Court, Bhubaneswar

By order of the Governor

P. K. PANDA  
Under-Secretary to Government